IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8173 OF 2004

Shri Bramhagayatri Shikshan Prasarak
Mandal .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents.

Mr.A.M.Kulkarni for the Petitioner.

Mr.S.R.Nargolkar, Assistant Government Pleaderp for
State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 23rd March, 2005

P.C.

Heard Mr.A.M.Kulkarni, the learned counsel for the petitioner.

2. The communication dated 21.7.2004 sent by the State Government to the Divisional Deputy Director of Education, District-Pune is under challenge in this writ petition.

3. The English translation of the communication dated 21.7.2004 reads thus-

"GOVERNMENT OF MAHARASHTRA

No:- NMASHA 1003/(420/04)/MAS HI-1.
School Education Department,
Mantralaya, Mumbai-32.

Date: 21.7.2004.

To,

Divisional Deputy Director of Education,
Dist.Pune.

Sub: Writ Petition No.2579/04
Shri Gajanan Shikshan Prasarak
Mandal, Solapur.

In respect of the above, referred subject, as per the order passed by the Hon'ble High Court, dated 28.11.2003, the proposal in respect of granting permission to the Secondary School at village Ranmasale by the petitioner Sanstha was duly considered.

2. Taking into consideration the positive recommendation made by the Dist.Committee to the proposal of petitioner Sanstha and the necessity of a School at 'Ranmasale', the permission granted to the petitioner Sanstha as per the Govt.letter dated 9.1.2002 to run the school on permanent no grant basis, is revived. Accordingly, further necessary action should be taken.

Sd/-
(M.A.Gutte)
Upper Secretary,
Govt.of Maharashtra."

4. Mr.A.M.Kulkarni, the learned counsel for the petitioner raised three-fold contention before us. Firstly, he contended that the earlier permission dated 9.1.2002 was not in existence and therefore, there was no question of its revival. In other words, the learned counsel for the petitioner contended that the permission granted by the State Government to the respondent No.5 is not in the nature of grant of permission. Secondly, the

learned counsel for the petitioner contended that the permission granted by the State Government to the respondent No.5 was contrary to the Government resolution dated 4.2.2000. His submission is that though the petitioner is running the school since 1991, within one kilo metre thereof, the respondent No.5 has been granted permission which is not permissible. According to the learned counsel, the permission granted to the respondent No.5 has resulted in unhealthy competition. Lastly, the learned counsel for the petitioner submitted that respondent No.5 does not have any infrastructure and the school is being run by them in tin shed in the agricultural land.

5. We are not impressed by any of the submissions.

6. The first thing that needs to be noticed by us is that the respondent No.5 has been granted permission to run the school at Ranmasale on permanent no-grant basis. That there is necessity of the school at Ranmasale and that the proposal of respondent No.5 to run the school at Ranmasale meets the necessary norms has been duly examined by the district level committee. The district-level committee recommended to the State Government to accept the proposal of respondent No.5-society to

run the school at Ranmasale. The State Government accepted the recommendation of the district-level committee. We hardly find any fault therein. As a matter of fact there is no challenge to the recommendation made by the district level committee to the State Government. The argument of the learned counsel for the petitioner that respondent No.5 has been granted permission to open the school within 5 kms. of petitioner's school is unsustainable since the district-level committee has observed that there is necessity of the school at Ranmasale. The aspect regarding unhealthy competition can be properly considered under the Secondary School Code at the time the question of recognition of the school run by respondent No.5 comes up for consideration before the competent authority.

7. The argument of the learned counsel for the petitioner that the impugned permission is not in the nature of grant of permission to run the school is too insignificant. It appears that the respondent No.5 has been making efforts to open the secondary school at Ranmasale and that effort has been obstructed by the petitioner from time to time. It was by the permission dated 9.1.2002 that the respondent No.5 was permitted to run the school

on permanent no-grant basis at Ranmasale but at the instance of the petitioner the said permission was put in abeyance. The said permission has been revived by the impugned communication dated 21.7.2004. It cannot be said by any stretch of imagination that the impugned communication is not in the nature of grant of permission to respondent No.5.

8. As regards lack of infrastructure in the school run by respondent No.5, suffice it to say that there are authorities to look into this aspect and that can be taken care of by issuing necessary direction to the Education Officer.

9. We direct the Education Officer, Secondary, Zilla Parishad, Solapur to look into this aspect and, if necessary, issue requisite directions to respondent No.5 and removal of the deficiencies, if any.

9. With the aforesaid observation, writ petition is dismissed in limine.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)